



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2005

Ms. Debra Rosenberg
Atlas & Halll, L.L.P.
P. O. Box 3725
McAllen, Texas 78502-3725

OR2005-03426

Dear Ms. Rosenberg:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222378.

The McAllen Independent School District (the "district"), which you represent, received a request for any and all information regarding the requestor and his professional interaction with the district's police department. You state that you have released some of the responsive information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code. First, subsections (a) and (b) of section 552.301 require a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(a), (b). While you raised sections 552.101 and 552.108 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.117 or section 552.1175 until after the ten-business-day deadline had passed.

Additionally, under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and

(4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that the district received the present request on January 27, 2005. Accordingly, you were required to submit the information required under section 552.301(e) to this office no later than February 17, 2005. Your submission containing a copy of the requested information bears a post office cancellation mark indicating it was mailed on February 18, 2005. Consequently, we find that you failed to comply with the fifteen business day deadline. *See* Gov't Code § 552.308(a) (timeliness requirement met if request bears post office cancellation mark indicating time within statutory time period).

Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and is generally waived by the governmental body's failure to comply with section 552.301 of the Government Code. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold any of the submitted information under section 552.108 of the Government Code. The district raises sections 552.101, 552.117, and 552.1175 as possible exceptions to disclosure for the submitted information. Because these sections can provide compelling reasons to withhold information, we will address your arguments concerning these exceptions. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by section 58.007 of the Family Code. Law enforcement records of juvenile offenders engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997 are confidential under section 58.007. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The records at issue contain references to acts of misconduct by the district's students. With the exception of one document, none of these records reflect the ages of the students at issue. Furthermore, the district has not otherwise provided us with the ages of these students. Since the district has failed to demonstrate that the students were between the ages of ten and sixteen at the time of the alleged conduct, we conclude that you have failed to demonstrate the applicability of section 58.007 to these records. *See* Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). As previously noted, one of the records does contain the age of the student. You do not explain, however, nor does the record reflect, that the child engaged in delinquent conduct or conduct indicating a need for supervision as defined by section 51.03 of the Family Code. *See* Fam. Code § 51.03 (defining conduct indicating a need for supervision as, among other things, an act that violates a school district's standards of student conduct for which the child has been expelled under Educ. Code § 37.007(c)); *see also* Educ. Code § 37.007(c) (providing for expulsion in certain circumstances). Thus, the district has failed to demonstrate the applicability of section 58.007 to this document as well.

Next you claim that some of the submitted information must be withheld under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of peace officers regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential.¹ In this instance, we find that there is no personal information of the district's police officers in the submitted information. Thus, none of the submitted information may be withheld under section 552.117(a)(2) of the Government Code. We do, however, find personal information of the requestor in the submitted information. However, section 552.117 is applicable only to information that a governmental body holds in its capacity as an employer. Here, the information at issue is held by the district's police department in its capacity as a law enforcement entity, not as the employer of the individual at issue. Accordingly, the requestor's personal information may not be withheld under section 552.117(a)(1) of the Government Code.

¹The term peace officer is defined in article 2.12 of the Texas Code of Criminal Procedure.

You also claim that some of the submitted information is protected by section 552.1175 of the Government Code, which provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). Section 552.1175 affords peace officers the opportunity to withhold personal information that is contained in records maintained by any governmental body. In this instance, you do not indicate, nor does it appear, that the records contain the personal information of peace officers of other governmental bodies. Accordingly, none of the submitted information may be withheld under section 552.1175 of the Governmental Code. Because the district raises no other exceptions for disclosure, you must release the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 222378

Enc. Submitted documents

c: Mr. Kyle Pugh
c/o Debra Rosenberg
Atlas & Halll, L.L.P.
P. O. Box 3725
McAllen, Texas 78502-3725
(w/o enclosures)